

## **EXHIBIT 21**

Griffin, Deborah S (BOS - X72044)

Dore 58  
4-13-05

**From:** Griffin, Deborah S (BOS - X72044)  
**Sent:** Wednesday, August 20, 2003 4:07 PM  
**Cc:** 'THOMAS McEnaney'; 'Stephen.Beatty@kemperinsurance.com'; 'Anastasio, Rich'; Bouchard, Matthew C (BOS - X72023)  
**Subject:** North Brookfield Tender Agreement -- Kemper Sciaba\_v1.DOC

I hope you had a good vacation. I am attaching a draft of a tender agreement between American Manufacturers and the Town of North Brookfield with respect to the Junior/Senior High School project. Please note that the table of figures recapping the status of contract funds in paragraph 1 of the draft is incomplete, pending determination of the amount owed under Construction Change Directive #3. It may change further if additional issues emerge during the bid process.

In addition, you will see that the surety asserts several partial defenses that will have an impact upon the ultimate amount the surety pays or tenders (if any) pursuant to the agreement. I hope the basis for the defenses is clear from the recitals. The most significant defense relates to the payments that the town released to Sciaba during the last 10 days of May, when it knew that Sciaba's performance was seriously deficient and that making such payments would leave insufficient funds in the hands of the town to complete the work if Sciaba was terminated. Of the \$700,000+ paid, Sciaba only used about \$100,000 to pay job costs. Thus, the making of those payments in those circumstances impaired the contract funds as collateral to the surety, prejudiced the surety, and effected a partial, or *pro tanto*, discharge of the surety's liability to the town under its bond. The concept of *pro tanto* discharge in such situations is well recognized. See, e.g., *Balboa Ins. Co. v. United States*, 775 F.2d 1158 (Fed. Cir. 1985); *United Pacific Ins. Co. v. United States*, 16 Cl. Ct. 555 (1989); *Ohio Casualty Ins. Co. v. United States*, 12 Cl. Ct. 590 (1987); *Walters Air Conditioning Co. v. Firemen's Fund Ins. Co.*, 252 So. 2d 919 (La. App. 1971). This is an issue the surety would like to discuss with the town in hopes of reaching an overall agreement.

As you may know, there was a pre-bid meeting today at the job site, at which prospective bidders obtained the request for proposals, had a walk-through of the project and were able to ask questions. It is my understanding that bids are due September 8, with an expected notice to proceed by September 15, 2003.

In light of this time-table, ideally the surety and the town should resolve any issues concerning the terms of the tender in advance of September 15. The tender amount will, at least in part, reflect the bids that come in, and thus cannot be pinned down until the bids are in. However, we should be able to reach agreement on the amount of the adjustment on account of the surety's defenses, as well as the other terms of the tender agreement, even before the bids are in.

I look forward to hearing from you.



North Brookfield  
Tender Agreem...

Deborah S. Griffin  
Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
617-305-2044  
fax 617-523-6850  
deborah.griffin@hklaw.com

## TENDER AGREEMENT AND RELEASE OF SURETY

This Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of August, 2003, by and between American Manufacturers Mutual Insurance Company (the "Surety") and the Town of North Brookfield, Massachusetts (the "Obligee").

## RECITALS

WHEREAS, on or about April 19, 2002, E.J. Sciaba Contracting Co., Inc. (the "Former Contractor"), and the Obligee entered into a contract (the "Original Contract") for the Former Contractor to construct the Junior/Senior High School, North Brookfield, Massachusetts (the "Project"), in accordance with the terms and provisions of the Original Contract, including all contract documents forming a part of the Original Contract, as amended;

WHEREAS, on or about \_\_\_\_\_, 2002, as required by law and under the terms of the Original Contract, the Former Contractor and the Surety made, executed and delivered to the Obligee a Performance Bond and a Payment Bond, Bond No. SE 057 856 (collectively, the "Bonds"), each in the original penal sum of \$13,222,000;

WHEREAS, on or about April 23, 2003, the Obligee sent a letter to the Former Contractor and the Surety enumerating numerous breaches of the Original Contract on the part of the Former Contractor;

WHEREAS, on or about May 21, 2003, at a meeting among representatives of the Obligee, the Surety and the Former Contractor, the Obligee again asserted numerous breaches of the Original Contract on the part of the Former Contractor;

WHEREAS, on or about May 21, 2003, and May 27, 2003, the Obligee paid the Former Contractor \$287,556.28 and \$443,833.76 respectively, on account of the Original Contract (the "May Payments"), without the knowledge or consent of the Surety;

WHEREAS, the Surety has been able to identify only \$100,700.49 of the May Payments as having been received by subcontractors and suppliers of the Former Contractor on account of the Project leaving \$630,589.55 of the May Payments (the "Alleged Overpayment") paid by the Obligee to the Former Contractor that the Surety believes the Former Contractor failed to apply to the costs and liabilities it incurred in connection with the Project;

WHEREAS, the Former Contractor voluntarily defaulted or otherwise indicated its inability to perform the Project, and the Obligee has terminated the right of the Former Contractor to perform under the Original Contract and called upon the Surety to fulfill its obligations as surety under the terms of the Performance Bond;

WHEREAS, the Surety, in conjunction with the Obligee, obtained a Replacement Contract (the "Replacement Contract"), a copy of which is attached hereto as Exhibit A, for completion of the Contract work from \_\_\_\_\_ (the "Replacement Contractor"), for an agreed price of \$ \_\_\_\_\_;

WHEREAS, the Surety contends that payment of the May Payments by the Obligee was improper and prejudicial to the Surety to the extent of the Alleged Overpayment, providing the Surety with a partial discharge under its Performance Bond in the amount of \$630,589.55;

WHEREAS, the Surety acknowledges that the schedule for completion set forth in the Replacement Contract affords time for completion beyond the current date(s) in the Original Contract, as amended, but contends that the Former Contractor was entitled under the Original Contract to additional time extensions; and

WHEREAS, the parties wish to resolve all outstanding claims, defenses and disputes between them with respect to the Bonds;

NOW, THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Obligee and the Surety agree as follows:

### AGREEMENTS

1. The Obligee and the Surety agree that as of September 1, 2003, the status of the contract price and contract funds under the Original Contract is as follows:

Original Contract Amount	\$ 13,222,000.00
Executed Change Orders	+132,829.28
Adjusted Contract Amount	13,354,829.28
Monies earned through Requisition 14	5,644,481.25
Less Retainage held through Requisition 14	-282,224.08
Less Monies Paid to Former Contractor or direct payment claimants	-5,155,969.10
<b>Contract Balance</b> (including Retention & Earned and Unpaid Monies)	<b>8,198,860.18</b>
<b><u>Pending Change Orders &amp; Adjustments</u></b>	
Construction Change Directive 3	TBD
<b>Total Available Contract Balance</b>	<b>\$ 8,198,860.18 + CCD3</b>

2. The Surety hereby tenders to the Obligee, and the Obligee accepts and will execute, the Replacement Contract with the Replacement Contractor for completion of the Contract. The Obligee will accept from the Replacement Contractor performance and payment bonds in favor

of the Oblige, issued by a company authorized to issue surety bonds in the Commonwealth of Massachusetts, guaranteeing the Replacement Contractor's performance the Replacement Contractor with respect to the Replacement Contract.

3. The Oblige will assume and will be solely responsible for all costs and obligations of Contract administration in the completion of the Project with the Replacement Contractor.

4. The Surety hereby tenders, and the Oblige hereby accepts payment in the amount of \$ \_\_\_\_\_, which represents (a) the difference between the agreed price under the Replacement Contract and the Total Available Contract Balance as set forth above, less (b) an adjustment to resolve the Surety's defenses based upon the Alleged Overpayment and claims for additional time extensions.

5. Insofar as the Oblige has any right, title or interest therein, the Oblige agrees that the Replacement Contractor shall have the right to use, without charge, any of the equipment, materials and appurtenances furnished or supplied by the Former Contractor which may be stored on or about the premises of the Project site, or stored off site under the terms of the Original Contract or applicable law or materials which may have been fabricated for use in connection with the Original Contract, whether or not presently upon the Project site.

6. The Oblige hereby releases and forever discharges the Surety from and against any and all claims, demands, causes of action, damages or expenses arising out of or in any way related to the Contract or the Bond.

7. It is agreed that the Surety will remain liable under the Payment Bond (Bond No. 3SE 057 856) it issued to the Oblige on behalf of the Former Contractor with respect to the Project.

Nothing in this Agreement constitutes a waiver of the penal sum or an increase in the liability of the Surety under the Payment Bond. Nothing in this Agreement constitutes the Replacement Contractor a principal of the Surety under the Payment Bond.

8. This Agreement is solely for the benefit of the Obligee and the Surety. The Obligee and the Surety do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the Obligee and the Surety. Specifically, the Obligee and the Surety acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of the Surety under the Bonds.

9. It is hereby agreed that by their execution of this Agreement neither the Surety nor the Obligee intends to waive or forfeit (a) any rights or claims that may be asserted against the Former Contractor under either the Contract or the General Indemnity Agreement between the Surety and the Former Contractor; (b) any rights or defenses with respect to any claim relating in any way to the Contract, that has been or may hereafter be asserted by the Surety against any person other than the Obligee or against the Surety by any person other than the Obligee.

10. This Agreement constitutes the whole of the understanding, discussions, and agreements by and between the Obligee and the Surety. The terms and provisions of this Agreement are contractual and not mere recitals. The Obligee and the Surety acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.



11. This Agreement shall not be changed, amended or altered in any way except in writing and executed by both the Oblige and Surety.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

13. This Agreement shall be governed by and controlled by the laws of the Commonwealth of Massachusetts.

14. Any notices which are required to be given by the terms of this Agreement or the Bonds shall be made as follows:

As to the Oblige:

Via certified mail, return receipt requested,  
postage prepaid and/or by telefax to:

Robert O'Neill  
Superintendent of Schools  
Town of North Brookfield  
10 New School Street  
North Brookfield, MA 01535  
Fax: (508) \_\_\_\_\_

With a copy to:

Thomas W. McEnaney, Esq.  
Kopelman and Paige, P.C.  
51 St. James Avenue  
Boston, MA 02116-4102  
Fax: (617) 654-1735

As to the Surety:

Via certified mail, return receipt requested,  
postage prepaid and/or by telefax to:

Stephen J. Beatty, Esq.  
Senior Surety Counsel  
Kemper Insurance Companies  
1 Kemper Drive  
Long Grove, IL 60049-0001

Fax: (847) 320-5828

With a copy to:

Deborah S. Griffin, Esq.  
Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Fax No.: (617) 523-6850

15. This Agreement is effective as of the date first written above.

16. This Agreement shall be binding upon the parties and their respective successors and assigns.

17. In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

18. It is understood and agreed by the Obligor and the Surety that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.

Town of North Brookfield

By: \_\_\_\_\_

Title: \_\_\_\_\_



American Manufacturers Mutual Insurance Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

BOS1 #1351171 v1  
431261.00005

DRAFT

## **EXHIBIT 22**

MDW13392



1795 WILLISTON RD. STE 200, SOUTH BURLINGTON, VT 05403  
 PHONE: 802.863.1428 FAX: 802.863.6955  
 29 WATER ST. STE 304, NEWBURYPORT, MA 01950  
 PHONE: 978.499.2999 FAX: 978.449.2944  
 1400 HANCOCK ST. QUINCY, MA 02169  
 PHONE: 617.471.2897 FAX: 617.471.2516

WWW.DOREANDWHITTIER.COM

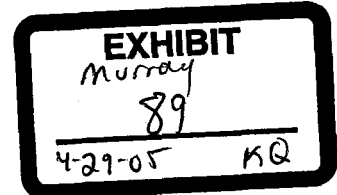
## MEETING NOTES

**DATE OF MEETING:** 10 September 2003

**PROJECT:** North Brookfield Jr./Sr. High School  
 Dore & Whittier Project No. 00-404

**SUBJECT:** School Building Committee Meeting, 7:00 PM

<b>ATTENDING:</b>	Jim Murray	Co-Chair, Building Committee
	Don Gillette	Co-Chair, Building Committee
	Greg Kline	Building Committee
	Patty Pariseau	Building Committee
	Ed Wilkins Jr.	Building Committee
	Ed O'Malley	Principal
	Bob O'Neill	Superintendent
	Mary Ellen Tshilis	Building Committee
	Larry Hassenfus	Selectboard (Partial)
	Chris Conway	Construction Manager (CMC)
	Lee Dore	Dore and Whittier, Inc. (DW)



1. Meeting Minutes of 8/13/03 were approved unanimously as presented.
2. Jim Murray updated the Committee on the fact that the Selectboard has authorized hiring co-counsel to assist Thomas McEnaney of Kopelman & Paige (Town Counsel) with the project. Mr. Kieran Meagher of Meagher Law Associates will assist the project until a successful 'Tender' Agreement is reached with the Surety. Mr. Meagher has extensive experience in construction law and has worked with the Surety's counsel on prior projects. Both attorneys working for the Town have met to review notes and establish a game plan in which to proceed. DW and Jim Murray are in frequent communications with each attorney.
3. The Committee was updated on the fact that the pre-bid conference had been held. Only three General Contactors were present at this mandatory meeting. Fontaine Brothers, Inc., Consigli Construction and Agostini Construction were in attendance as were DW, CMC and Rick Anastasio of Greyhawk Consultants. Greyhawk has informed the Committee that bids were received by each of the three contractors who attended the pre-bid conference. These bids were received at the offices of Greyhawk on September 8, 2003. The Committee has only been informed that the bids were "high" in

North Brookfield School Building Committee  
Meeting 10 September 2003  
Page 2

- 2 -

comparison to Greyhawk's estimate and that the Surety was reviewing the results.

4. Town Counsel will await notification from the Surety as to which direction the Surety intends to proceed and what the intended time frame is expected to be.
5. Jim Murray informed the Committee that DW has prepared an approach to estimating the costs for architectural and construction management services to complete the project. This information has been forwarded to Town Counsel. The Committee discussed the need for Town Counsel to be fully aware of any potential damages claims due the default of EJ Sciaba. Some information discussed included: Builder's risk Insurance rider costs, high school roof repairs, gas utility costs, Mass electric costs, G.E. capital (ground storage containers), legal expenses, architectural and construction management services. DW will review any other items that should be considered. The Committee also discussed the need to have the 'Tender' Agreement address any unknowns such as latent defects in the project.
4. The Committee discussed the Surety's claim that the Town should not have paid EJ Sciaba's April, 2003 requisition for payment. The Surety has claimed that the Town was aware that EJ Sciaba could potentially be nearing a default situation and should not have made a payment to them. Town Counsel has responded in writing to this claim and is awaiting a response from the Surety.
5. Warrants were approved for payments to Dore and Whittier, Inc. and Kopelman and Paige.
6. The next meeting is scheduled for September 17, 2003 at 7PM. *This meeting was later postponed and re-scheduled for September 24, 2003 at 7PM.*

**The above is my summation of our meeting. If you have any additions and/or corrections, please contact me for incorporation into these minutes. After 10 days, we will accept these minutes as an accurate summary of our discussion and enter them into the permanent record of this project.**

Sincerely,

**DORE AND WHITTIER, INC.**  
Architects • Project Managers

  
Lee P. Dore, Assoc. AIA, CSI  
Project Manager

c Bob O'Neill, Superintendent of Schools  
Mr. John Couture, Building Inspector  
Chris Conway, Construction Manager  
Engineers Design Group  
Garcia, Galuska, Desousa  
Berkshire Design Group  
ATC  
CCR/Pyramid  
John Crisafulli Consulting Services, Inc.  
RJD/LPD/JFT/ARR/HA/GOJ/RLZ/file

Prepared 17 September 2003

## **EXHIBIT 23**

Dore 61

4-13-05

v.5

**Griffin, Deborah S (BOS - X72044)**

From: Griffin, Deborah S (BOS - X72044)  
 Sent: Tuesday, November 04, 2003 12:10 PM  
 'TMCENANEY@k-plaw.com'  
 Cc: 'sbeatty@kemperinsurance.com'; 'jiantuono@greyhawk.com'  
 Subject: Re: North Brookfield

Indeed the surety has selectd Fontaine Bros. I have been trying since last Friday to get from Fontaine Bros their signed Completion Contract and bonds. I spoke with their apparent counsedl to try to get that moving. As soon as I have them I wil get them over to you so the town can proceed to accept the contract and give them a notice to proceed.

We will have to talk next week about the terms between the surety and the town.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: THOMAS McEnaney <TMCENANEY@k-plaw.com>  
 To: deborah.griffin@hklaw.com <deborah.griffin@hklaw.com>  
 CC: lashaway@aol.com <lashaway@aol.com>; lpdore@DoreandWhittier.com <lpdore@DoreandWhittier.com>;  
 kmeagher@kmeagherlaw.com <kmeagher@kmeagherlaw.com>  
 Sent: Tue Nov 04 12:03:30 2003  
 Subject: North Brookfield

Deborah:

I spoke with your secretary today, who informed me that you were out of Town on a family medical issue but would be checking your email. I hope all goes well with your family situation. Pursuant to your request, I will provide you with the additional back-up to substantiate the additional design and project management costs.

date, we still have not heard from you whether the surety has selected a contractor to complete the project. The Town has received a few calls from Chris Fontaine who stated that Fontaine Bros. has been selected by the bonding company as completing contractor and wants to begin work asap. It is my understanding that he expressed concern with the delays in the selection process and the impact that these delays will have on his cost and ability to close up the building before the onset of winter conditions. The Town shares these same concerns. Kindly advise whether Fontaine has in fact been selected and when you expect to tender Fontaine to the Town.

As you know, there are a number of outstanding issues concerning the tender agreement, including the surety's claim for a pro tanto discharge and the Town's claims for additional costs that were incurred as a result of Sciaba's voluntary default. If we cannot reach an agreement on these issues by next week, I suggest that we either (1) reserve our rights with respect to these issues as we originally proposed in our draft revisions to the tender agreement; or (2) the surety enter into a contract with Fontaine so that Fontaine can begin work, and after we resolve these outstanding issues, have the surety assign the contract with Fontaine to the Town.

If you would like to meet, I am available on 11/12 in am, 11/13 or 14. I can check with Kieran as to his availability next week.

Tom



## **EXHIBIT 24**

Ex. 153

**Whited, Bonnie S (BOS - X72047)**

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**From:** Anastasio, Rich [ranastasio@greyhawk.com]  
**Sent:** Thursday, October 23, 2003 5:31 PM  
**To:** deborah.griffin@hklaw.com  
**Cc:** 'sbeatty@kemperinsurance.com'  
**Subject:** NBJSHS Best & Final Bids  
**Importance:** High

The attached represents the Best & final bids with breakdowns as received from each of the 3 bidders. I have great deal of problems trying to attach and email this so I am hoping you each receive it intact please acknowledge whether you can open and print the files.

The attached are from Consigli and Fontaine. I still cannot get the Agostini/ Bacon version to attach. It will follow under separate cover I may have to print it and scan it

3/2/2004

 FONTAINE BROS. INC.

October 17, 2003

Mr. Richard Anastasio, P.E.  
Greyhawk North America  
260 Crossway Park Drive  
Woodbury, NY 11797-2015

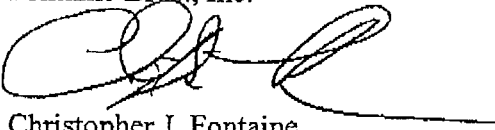
Re: North Brookfield Junior & Senior High School

Dear Mr. Anastasio,

As you have requested we have sent you via email and hardcopy fax a "Best & Final Price Recap" for the above project. Should you require anything additional, please do not hesitate to contact us.

Sincerely,

Fontaine Bros., Inc.

  
Christopher J. Fontaine  
Executive Vice President

By email & fax

Cc: David P. Fontaine

CJF/jh

BUILDING FOR OVER 60 YEARS

BIDDERS NAME:						
Project: North Brookfield JR/SR High School "Cost to Complete"						
<b>BEST &amp; FINAL PRICE RECAP</b>						
Spec	Description	Subcontractor / Supplier	A Ratified Pending	B Ratified Executed	C Other	A+B+C Total Cost to Complete
<b>Div 1</b>	<b>General Requirements</b>		\$ -	\$ -	\$ 474,200	\$ 474,200
Item	General Conditions	Fontaine Bros			471,700	\$ 471,700
Item	Survey	Fontaine Bros			2,500	\$ 2,500
<b>Div 2</b>	<b>Site Work</b>		\$ -	\$ -	#####	\$ 1,848,000
02060	Building Demolition	Fontaine Bros			140,000	\$ 140,000
02080	Asbestos Abatement	Fontaine Bros			120,000	\$ 120,000
02081	Dist. Of Lead Containing Material	NA				\$ -
02083	Misc Hazardous Material Removal	Fontaine Bros			20,000	\$ 20,000
02084	Cleaning Removal & Disp Fuel oil Storage Tank	Fontaine Bros			10,000	\$ 10,000
02200	Earthwork Sub Package	Fontaine Bros			1,400,000	\$ 1,400,000
02850	Seeding	Fontaine Bros			48,000	\$ 48,000
02950	Site Improvements	Fontaine Bros			110,000	\$ 110,000
<b>Div 3</b>	<b>Concrete</b>		\$ -	\$ -	\$ 541,700.00	\$ 541,700
03300	CIP Concrete	Fontaine Bros			541,700	\$ 541,700
<b>Div 4</b>	<b>Masonry</b>		\$ -	\$ -	\$ 800,000.00	\$ 800,000
04200	Masonry	Fontaine Bros			800,000	\$ 800,000
<b>Div 5</b>	<b>Metals</b>		\$ 210,034	\$ -	\$ 186,500	\$ 396,534
05120	Structural Steel	Mandate			186,500	\$ 186,500
05500	Miscellaneous Metals Fabrications	United Steel	210,034.00			\$ 210,034
<b>Div 6</b>	<b>Carpentry</b>		\$ -	\$ -	\$ 338,000.00	\$ 338,000
06100	Rough Carpentry	Fontaine Bros			291,000	\$ 291,000
06200	Finish Carpentry	in 06100				\$ -
	Finish Woodwork Material	Fontaine Bros			47,000	\$ 47,000
	Finish Woodwork Labor	in 06100				\$ -
<b>Div 7</b>	<b>Thermal and Moisture Protection</b>		\$ 972,757.33	\$ -	\$ 278,000.00	\$ 1,250,757
07100	Waterproofing, Dampproofing & Caulking	Fontaine Bros			121,000	\$ 121,000
07200	Building Insulation	Fontaine Bros			12,000	\$ 12,000
07400	Metal Siding & Soffits	HG Bass			145,000	\$ 145,000
07500	Roofing & Flashing	Greenwood Ind.	972,757.33			\$ 972,757
07800	Roofing Accessories	Greenwood Ind.	incl			\$ -
07900	Joint Sealers	Greenwood Ind.				\$ -
<b>Div 8</b>	<b>Doors &amp; Windows</b>		\$ -	\$ 208,634.75	\$ 4,044.00	\$ 212,679
08100	Hollow Metal Drs & Frames - Materials FOB	HCI		89,963.75		\$ 89,964
Item	Steel Frames - LABOR @ masonry	in 06100				\$ -
Item	Steel Frames - LABOR @ Non Masonry	in 06100				\$ -
	HM Borrowed Lite Labor	in 06100				\$ -
	HM Doors (install)	in 06100				\$ -
08200	Wood Doors	W/HCI				\$ -
Item	Wd & Steel Door Labor Nic hardware	in 06100				\$ -
08300	Special Doors	DELETED				\$ -
08300	Install					\$ -
08331	Overhead Coiling Doors	Sanborn			4,044	\$ 4,044
08400	Aluminum Entrances, Doors and Window Sys	Cheviot		99,175.00		\$ 99,175
	Reorder Type K	Cheviot				\$ -
08710	Door Hardware Materials	W/HCI				\$ -
Item	Door Hardware Labor	in 06100				\$ -
08800	Glass & Glazing	Architectural		19,496.00		\$ 19,496
<b>Div 9</b>	<b>Finishes</b>		\$ -	\$ 223,040.00	#####	\$ 1,329,476
GYP	Drywall PKG	Fontaine Bros			750,000	\$ 750,000
09300	Tile	Bachand Tile		146,040.00		\$ 146,040
09510	Acoustical Ceiling	WMass Acoustics			95,786	\$ 95,786
09561	Resilient Wood Flooring (9,090 SF)	in 09800				\$ -
09650	Resilient Flooring	Ayotte & King			98,450	\$ 98,450
09680	Carpet	Fontaine Bros			30,000	\$ 30,000
09700	Special Flooring	Athletic Flooring		77,000.00		\$ 77,000
09800	Gymnasium Floor Coating	in 09800				\$ -
09840	Acoustical Panels	WMass Acoustics			7,200	\$ 7,200
09850	Special Wall Coatings	in 09900				\$ -
09900	Painting	Berger Painting			125,000	\$ 125,000
<b>Div 10</b>	<b>Specialties</b>		\$ -	\$ 11,787.31	\$ 139,870.00	\$ 151,657
10100	Marker Boards and Tack Boards	N England			14,000	\$ 14,000

BIDDERS NAME:						
Project: North Brookfield JR /SR High School "Cost to Complete"						
<b>BEST &amp; FINAL PRICE RECAP</b>						
Spec	Description	Subcontractor / Supplier	A Ratified Pending	B Ratified Executed	C Other	A+B+C Total Cost to Complete
10150	Toilet and Shower Partitions	Fontaine Bros			22,000	\$ 22,000
10190	Cubicle Track System	FFE			630	\$ 630
10200	Metal Louvers	American Warming		2,065.00		\$ 2,065
Item	Labor for above (9 ea)	in 06100				\$ -
10400	Exterior Letters	Lauretano		9,722.31		\$ 9,722
10420	Commemorative Plaque	Lauretano				\$ -
10440	Interior Signage	Lauretano				\$ -
Item	Labor for above	Lauretano				\$ -
10500	Metal Lockers	Northern			77,300	\$ 77,300
10520	Fire Extinguishers & Cabinets	Sanahart			2,218	\$ 2,218
10651	Operable Partitions	Pappas			21,000	\$ 21,000
10810	Washroom Accessories	Sanahart			2,722	\$ 2,722
Div 11	Equipment		\$ -	\$ 393,495.10	\$ 34,000.00	\$ 427,495
11131	Classroom Equipment (projection screen)					\$ -
11400	Food Service Equipment	Holyoke Equipt		134,133.00		\$ 134,133
11486	Basketball Back Boards and Goals	Pappas			34,000	\$ 34,000
11500	Gymnasium Equipment	in 11486				\$ -
11600	Fixed Casework & Equipment	Slay Dale		259,362.10		\$ 259,362
Div 12	Furnishings		\$ -	\$ 17,240.00	\$ 52,472.00	\$ 69,712
12675	Floor Mats	Fontaine Bros			3,000	\$ 3,000
Item	Labor for above					\$ -
12710	Assembly Seating	Slay Dale		17,240.00		\$ 17,240
12760	Telescoping Bleachers	Lord			49,472	\$ 49,472
Div 13	Special construction		\$ -	\$ -	\$ -	\$ -
Div 14	Elevator			14,684	-	\$ 14,684
14225	Hydraulic Elevator	Baystate		14,683.75		\$ 14,684
Div 15	Mechanical		\$ -	\$ 2,258,288.90	\$ -	\$ 2,258,289
15100	Vibration Control And Seismic Restraint					\$ -
15300	Fire Protection	SRI		120,197.68		\$ 120,198
15400	Plumbing	Millis		500,002.52		\$ 500,003
Item	Staging and Hoisting	Millis				\$ -
15600	HVAC	KMD		1,638,088.70		\$ 1,638,089
15600	Staging and Hoisting	KMD				\$ -
Div 16	Electrical		\$ -	\$ 907,832.55	\$ -	\$ 907,833
16000	Electrical ( Including Portions of 15100)	Griffin		742,932.55		\$ 742,933
16740	Voice Data & Video Cabling	Commercial		164,900.00		\$ 164,900
	Subtotal		\$ 1,182,791.33	\$ 4,035,002.49	#####	\$ 11,021,016
	Subcontractor Bonds Direct Work					
	Subcontractor Bonds Ratified Bids					20,000
	Permit Costs					
	Builder's Risk	Fontaine Bros			11,200	11,200
	Additional Umbrella Policy	included				
	Owner's Protective Liability	included				
	Fee					506,641
	P&P Bond					68,143
	Adjustment					(100,000)
	Subtotal					\$ 505,984.00
	GRAND TOTAL					\$ 11,527,000.00

## **EXHIBIT 25**



Ex. 152

**Rameau, Angele**

---

**From:** Anastasio, Rich  
**Sent:** Friday, October 24, 2003 12:12 PM  
**To:** 'Stephen.Beatty@kemperinsurance.com'; Anastasio, Rich  
**Cc:** deborah.griffin@hklaw.com; Anastasio, Rich  
**Subject:** RE: Sciaba/ N. Brookfield/ Bids

I am working on that as I read this in anticipation. For starters, WJS had a schedule of values for various categories that was far in excess of the actual costs, particularly on the structural steel where EJS had more than 1.9M in the pay req. when the actual s/c cost was only 800K and then, EJS didn't pay the sub leaving us with over 1.1M in costs that he pocketed from the early payment of the steel and then sticking us with the lawsuit/paybond claim that is several hundred thousand dollars. There are others. I am also trying to line up the breakdown from each of the bidders to show the overpayment by the town in certain categories; but not being able to obtain Agostini/Bacon's breakdown via email is lousing that operation up for the moment.

Apparently Agostini's server is experiencing the same problem that the GREYHAWK system did recently and it all relates to hackers in the system who can track large email transfers of data (like an rfp or large worksheets) and that alerts the hackers into servers with large capacity and then they "tap into" your server and use the capacity to store their own data. It is very scary and consultants and law firms are particularly susceptible to those kinds of hackers.

-----Original Message-----

**From:** Stephen.Beatty@kemperinsurance.com [mailto:Stephen.Beatty@kemperinsurance.com]  
**Sent:** Friday, October 24, 2003 11:47 AM  
**To:** ranastasio@greyhawk.com  
**Cc:** deborah.griffin@hklaw.com  
**Subject:** Sciaba/ N. Brookfield/ Bids

Rick:

I have the bids you forwarded yesterday. I'm still in a bit of shock, given the \$2.5 million discrepancy between those bids and the 7/21/03 cost to complete estimate that was worked up. Granted that it was preliminary, etc., but its still a big swing. I'm now going to have to go to Pat Nails, and he's going to have to go to his superiors, for authority to increase the reserve for completion from the initial estimate to between \$3.3 and \$3.7 million. And they're probably going to want an explanation for the substantial difference between the estimate and the bids. So in anticipation of this, I would appreciate it if you can give me your observations and reasons for the difference. (Debbie, any thoughts that you have on the subject would also be helpful.) Thanks.

Stephen Beatty  
Senior Surety Counsel  
Kemper Surety  
1 Kemper Drive  
Long Grove, IL 60049-0001  
Phone: 847.320.2170  
Fax: 847.320.5828

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## **EXHIBIT 26**

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JOHN W. GIORGIO  
BARBARA J. SAINT ANDRE  
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JOSEPH L. TEHAN, JR.  
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DEBORAH A. ELIASON  
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DARREN R. KLEIN  
JONATHAN M. SILVERSTEIN

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TODD A. FRAMPTON  
JACKIE COWIN  
SARAH N. TURNER

November 3, 2003

BY FACSIMILE - (617) 523-6850

Deborah S. Griffin, Esq.  
Holland & Knight, LLP  
10 St. James Avenue  
Boston, MA 02116

**DEPOSITION  
EXHIBIT**

Dore 60  
4-13-05 VS

Re: North Brookfield Junior/Senior High School Project

Dear Ms. Griffin:

This is a follow-up to our October 15, 2003 meeting relative to the above-referenced project. As you may recall, you requested that the Town provide you with an estimate for the work that was performed by E.J. Sciaba Contracting Company, Inc. ("Sciaba") relative to CCD No. 3. Please be advised that project architect, Dore & Whittier, Inc. ("D&W"), issued CCD No. 3 to enable Sciaba to continue with the placement of concrete foundation walls at area "A" on July 19, 2002. CCD No. 3, along with sketch 071902, directed Sciaba to install four 6" wall sleeves A line and B line for later placement of two 4" PVC conduits to run data lines from the new high school to the elementary school. Sciaba completed the work along A line on or about August 22, 2002 and along B line on or about October 22, 2002. D&W estimate that this work cost \$440.00, based upon the following breakdown:

Material and labor to fabricate four 6" wall sleeves	\$200.00
Laborer to install four sleeves	\$200.00
Overhead and profit	<u>\$ 40.00</u>
Total Estimated Cost	\$440.00

Furthermore, you also requested that the Town provide you with a more detailed breakdown of the additional costs that it incurred as a result of Sciaba's voluntary default on the project. As we discussed, the Town has incurred legal fees in the amount of approximately \$10,000.00. As we also discussed, the Town incurred costs for roof repairs to the existing high school in the amount of \$6,336.50 that were performed in August, 2003. At the meeting, you

KOPELMAN AND PAIGE, P.C.  
Deborah S. Griffin, Esq.  
November 3, 2003  
Page 2

questioned whether American Manufacturers Mutual Insurance Company ("AMMIC"), as the performance bond surety, would be responsible for these costs because it was your belief that the scheduled completion date for the project was December 15, 2003. However, please be advised that the date that you cited is incorrect.

As you know, the building was originally scheduled for substantial completion on July 17, 2003. This date was extended by 28 days as a result of the unsuitable soils issue, which is addressed in Change Order No. 3. The substantial completion date for the demolition of the existing school and site work was similarly extended by 28 days from November 17, 2003 to December 15, 2003. If the building was completed by August 15, 2003 as required, the Town would not have had to incur the cost of repairs to the existing high school roof. Therefore, it is the Town's position that AMMIC is responsible for these costs.

In addition to the legal and roof costs, the Town also incurred and will incur additional costs for design and construction management services that are attributable to Sciaba's voluntary default. In accordance with your request, attached please find a breakdown of these additional fees, which total \$579,027.55. This includes the additional costs incurred by the Town to date, as well as a credit to AMMIC in the amount of \$256,593.38, which is the balance on the Town's contract with D&W. Please note that I can provide you with further explanation and support for this estimate upon your request and would be happy to meet with you to discuss this estimate further.

You also stated that Sciaba was entitled to an additional time extension in the amount of 60 days as a result of winter conditions. Please be advised that the Town denies that Sciaba is entitled to any time extensions on the Project, as it is the Town's position that any delays were caused by Sciaba. Sciaba's project schedule initially provided that Sciaba would close the building by January 7, 2002. At a partnering session in the Fall of 2002, Sciaba assured the Town that it would meet its deadlines. Yet, as you know, Sciaba never met its deadlines. As a result, the building was not closed prior to Winter, which would have enabled Sciaba and its subcontractors to work indoors. Since the Town and weather in no way contributed to any delays on this Project, the Town does not feel that a 60 day extension is warranted.

As you may know, the Town agreed to the completion dates of April 1, 2004 for the building and August 1, 2004 for the site and demolition work. It is the Town's understanding, however, that AMMIC has unilaterally changed the scheduled completion dates to April 30, 2004 and August 30, 2004 without the Town's knowledge and consent. Please be advised that the August 30, 2004 date for substantial completion of the site and demolition work is unacceptable. The Town has grave concerns that the August 30, 2004 will not be met, which could delay the opening of the High School and adversely impact public safety.

Nov 4 2003

8:44

P.04

11/03/2003 10:43 FAX 617 654 1735

KOPELMAN AND PAIGE

004/005

KOPELMAN AND PAIGE, P.C.

Deborah S. Griffin, Esq.

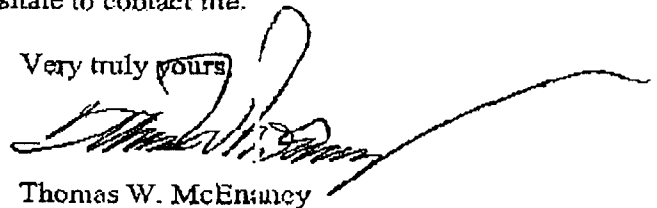
November 3, 2003

Page 3

Finally, as set forth in my October 22, 2003 e-mail to you, based on Greyhawk's latest schedule, it was our understanding that AMMIC was going to receive final bids on October 14, 2003 and select the completing contractor. To date, however, we have not been informed whether AMMIC has made its selection, although we have been told that Greyhawk has made its recommendation to AMMIC. Kindly advise as soon as possible whether AMMIC has selected a completing contractor. If AMMIC has not made its selection, please advise what is holding up the selection process and when we can expect a decision.

If you have any questions, please do not hesitate to contact me.

Very truly yours



Thomas W. McEnaney

TWM/kad

Enc.

cc: Board of Selectmen  
School Building Committee  
Mr. Lee Dore  
Kieran B. Meagher, Esq.

205014/NBRO/0017